

cost to the Office of searching applications for patent either by acquiring a search report from a qualified search authority, or by causing a search by Office personnel to be made, of each application for patent. For the 3-year period beginning on the date of enactment of this Act, the fee for a search by a qualified search authority of a patent application described in clause (i), (iv), or (v) of subparagraph (B) may not exceed \$500, of a patent application described in clause (ii) of subparagraph (B) may not exceed \$100, and of a patent application described in clause (iii) of subparagraph (B) may not exceed \$300. The Director may not increase any such fee by more than 20 percent in each of the next three 1-year periods, and the Director may not increase any such fee thereafter.

(B) For purposes of determining the fees to be established under this paragraph, the cost to the Office of causing a search of an application to be made by Office personnel shall be deemed to be -

- (i) \$500 for each application for an original patent, except for design, plant, provisional, or international applications;
- (ii) \$100 for each application for an original design patent;
- (iii) \$300 for each application for an original plant patent;
- (iv) \$500 for the national stage of each international application; and
- (v) \$500 for each application for the reissue of a patent.

(C) The provisions of section 111 (a)(3) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

(D) The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under section 131 of this title, and for any applicant who provides a search report that meets the conditions prescribed by the Director.

(E) For purposes of subparagraph (A), a "qualified search authority" may not include a commercial entity unless -

- (i) the Director conducts a pilot program of limited scope, conducted over a period of not more than 18 months, which demonstrates that searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications -

are accurate; and

meet or exceed the standards of searches conducted by and used by the Patent

and Trademark Office during the patent examination process;

(ii) the Director submits a report on the results of the pilot program to Congress and the Patent Public Advisory Committee that includes -

a description of the scope and duration of the pilot program;

the identity of each commercial entity participating in the pilot program;

an explanation of the methodology used to evaluate the accuracy and quality of the search reports; and

an assessment of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on -

patentability determinations;

productivity of the Patent and Trademark Office;

costs to the Patent and Trademark Office;

(dd) costs to patent applicants; and

other relevant factors;

(iii) the Patent Public Advisory Committee reviews and analyzes the Director's report under clause (ii) and the results of the pilot program and submits a separate report on its analysis to the Director and the Congress that includes -

an independent evaluation of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on the factors set forth in clause (ii)(IV); and

an analysis of the reasonableness, appropriateness, and effectiveness of the methods used in the pilot program to make the evaluations required under clause (ii)(IV); and

Congress does not, during the 1-year period beginning on the date on which the Patent Public Advisory Committee submits its report to the Congress under clause (iii), enact a law prohibiting searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications.

(F) The Director shall require that any search by a qualified search authority that is a commercial entity is conducted in the United States by persons that -

(i) if individuals, are United States citizens; and

(ii) if business concerns, are organized under the laws of the United States or any State and employ United States citizens to perform the searches.

(G) A search of an application that is the subject of a secrecy order under section 181 or otherwise involves classified information may only be conducted by Office personnel.

(H) A qualified search authority that is a commercial entity may not conduct a search of a patent application if the entity has any direct or indirect financial interest in any patent or in any pending or imminent application for patent filed or to be filed in the Patent and Trademark Office.

(2) OTHER FEES. - The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services; or materials, except that the Director shall charge the following fees for the following services:

(A) For recording a document affecting title, \$40 per property.

(B) For each photocopy, \$.25 per page.

(C) For each black and white copy of a patent, \$3. The yearly fee for providing a library specified in section 12 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be \$50.

(Dec. 8, 2004, Public Law 108-447, sec. 801, 118 Stat. 2809.)

The bracketed text below is the unamended text of 35 U.S.C. 41(d), which may continue to have effect following fiscal year 2006:

[(d) The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

(1) For recording a document affecting title, \$40 per property.

(2) For each photocopy, \$.25 per page.

(3) For each black and white copy of a patent, \$3. The yearly fee for providing a library specified in **section 13** of this title with uncertified printed copies of the specifications and drawings for all patents issued in that year shall be \$50.]

(e) The Director may waive the payment of any fee for any service or material related to patents in connection with an occasional or incidental request made by a department or agency of the Government, or any officer thereof. The Director may provide any applicant issued a notice under **section 132** of this title with a copy of the specifications and drawings for all patents referred to in that notice without charge.

(f) The fees established in subsections (a) and (b) of this section may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index,